

Form of  
authorisa-  
tion under  
second  
proviso to  
section 198  
or 199.

<sup>1</sup>[199B. (1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be counter-signed by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorisation and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.]

## CHAPTER. XVI.

### OF COMPLAINTS TO MAGISTRATES.

Examination  
of com-  
plainant.

200. 2\* \* \* A Magistrate taking cognizance of an offence on complaint shall at once <sup>3</sup>[examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses], and also by the Magistrate :

Provided as follows :—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;

<sup>4</sup>{(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties ;]

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and <sup>5</sup>[where the complaint is made in writing] need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing ;

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by  
Magistrate  
not com-  
petent to  
take cogni-  
zance of  
the case.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Postpone-  
ment for  
issue of  
process.

202. <sup>6</sup>[(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained

<sup>1</sup> Inserted by Act 28 of 1943, s. 4.

<sup>2</sup> The words and figures " Subject to the provisions of section 476 " rep. by Act 18 of 1923, s. 54.

<sup>3</sup> Substituted by Act 26 of 1955, s. 26, for the original portion.

<sup>4</sup> Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 54.

<sup>5</sup> Inserted by the Code of Criminal Procedure (Amendment) Act, 1926 (2 of 1926), s. 3.

<sup>6</sup> Substituted by Act 18 of 1923, s. 55, for the original sub-section (1).

against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

<sup>1</sup>[Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.]

<sup>2</sup>[(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.]

<sup>3</sup>[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, <sup>4</sup>[after considering the statement on oath (if any) of the complainant <sup>5</sup>[and the witnesses] and the result of <sup>6</sup>[the investigation] or inquiry <sup>7</sup>[(if any)] under section 202], there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing. Dismissal of complaint.

## CHAPTER XVII.

### OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction. Issue of process.

<sup>8</sup>[(1A) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.]

(1B) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.]

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

<sup>1</sup> Substituted by the Code of Criminal Procedure (Amendment) Act, 1926 (2 of 1926), s. 4, for the former proviso.

<sup>2</sup> Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 55, for the original sub-section (2).

<sup>3</sup> Inserted by s. 55, *ibid.*

<sup>4</sup> Substituted by s. 55, *ibid.*, for "after examining the complainant and considering the result of the investigation (if any) made under s. 202".

<sup>5</sup> Inserted by Act 26 of 1955, s. 27.

<sup>6</sup> Substituted by the Code of Criminal Procedure (Amendment) Act, 1926 (2 of 1926), s. 5, for "any investigation".

<sup>7</sup> Inserted by s. 5, *ibid.*

<sup>8</sup> Inserted by Act 26 of 1955, s. 28.